IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MISC.PETITION NO.40 OF 2002

SICOM Ltd. .. Petitioners

Vs.

Hargovind Joshi & Ors. .. Respondents

Mr.V.R.Dhond with Mr.K.G.Desai i/b M/s.Kartikeya & Associates for the petitioners

CORAM: S.U.KAMDAR, J
DATE : 2ND MAY,2005

P.C.:

1. The present petition is filed u.s.31(1)(aa) of the State Financial Corporation Act,1951 for the recovery of sum of Rs.98 Lacs. The company known as Penwin Cables P.Ltd which was formerly known as Wean Board Comm.Cables P.Ltd. on 23.12.94 put forward a proposal to set up new project for manufacture of Coaxial Coal at Plot No.11-1/2/2A Chakan Taluka Khed District Pune and applied for financial assistance from petitioner for sum of Rs.80 Lacs. The petitioners agreed to release the said loan amount on various terms and conditions which interalia included;

(i) That the company will execute an Indenture of

Mortgage mortgaging all its assets to the petitioners towards due repayment of the loan.

(ii) That the respondents herein will execute necessary deed of guarantees promising to pay the loan amount including interest thereon in an event of default in payment thereof by the said company who is a principal borrower.

2. In pursuance of the said understanding arrived at by and between the petitioners and the said company, the said loan was secured by the respondents by executing a deed of guarantee dated 23.11.94 and 6.9.95. The said amount was disbursed. The company committed various defaults in respect of the said repayment of the loan amount on its due dates as per the terms and conditions of the sanction. The petitioners decided to recall the entire amount outstanding of Rs.98,99,352/- together with interest and called upon the company to repay the said amount. Inspite of the said notice, company failed and neglected to repay the said amount and accordingly notice was issued u.s.29 of the State Financial Corporation Act and

the petitioners took possession of the mortgaged assets situated at Plot No./1102, Chakan-Ambithan Road, Birdawadi, Khed, Pune and the said assets are sold by the petitioners for a total consideration of Rs.48 Lacs. After adjusting the aforesaid amount according to the petitioners there is an amount outstanding of sum of Rs.95,44,000/- as due and payable as on date to the petitioners.

3. In view of the fact that the said amount was outstanding petitioner invoked bank guarantee by letter dt.21.3.02 and claimed the said amount from respondent no.1 to 3 who were the guarantors. Respondent in reply to the said letter addressed a letter dt.6.9.95 and contended that their signature was obtained on blank documents. The same is controverted by the petitioner by their letter dt.4.4.02. Ultimately the petitioners filed the present petition for claiming the aforesaid amount of Rs.95,44,000/-. Petitioners has also filed affidavit dt.12.4.05 confirming that the claim made in the petition is in accordance with the judgment of the Apex Court in the case of Central Bank of India vs. Ravindra and Ors. reported in 2002(1)

SCC Pg 367. Respondents are served. Affidavit of service dt. 21.04.05 is taken on record. Petitioners were directed to serve the respondents by substitute service. The said service is already been made by issuing public notice in newspaper on 20.4.05. Petitioner undertake to file affidavit of service putting therewith the post of the said service by publication Inspite of service none appears. No affidavit in reply is filed by the respondents. In view thereof, I pass the following order:

4. Respondents are directed to make payment of Rs.95,44,000/- with further 12% interest from date of petition till payment and/or realisation.